IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 260 of 1995.

Judgement reserved on: 14.9.2007

Date of decision: 6.11.2007.

Salig Ram & ors. ….. **Appellants.**

Vs.

Ram Lal & ors. …. **Respondents.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : **Mr. R.K.Sharma, Advocate.**

For the Respondents : **Mr. K.D.Sood, Advocate, for respondents No. 1 (a) of respondent No.1 and proposed LRs No. 2(a) and 2(b) of respondent No.2.**

Kuldip Singh, Judge.

This appeal has been directed against the judgement, decree dated 6.6.1995, passed by the learned District Judge, Bilaspur in Civil Appeal No. 154 of 1988, decreeing the suit of the respondents- plaintiffs for possession of land measuring 25 Biswansies as shown in Tatima Ex. C-2 attached with the Local Commissioner's report after demolition of structure raised thereon.

2. The facts in brief as emerge from the plaint are that respondents- plaintiffs filed a suit for permanent prohibitory injunction regarding land comprised in khasra No. 146, measuring 1-8 Bighas,

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Whether the reporters of the local papers may be allowed to see the Judgment?

situated in village Saunkhar, Pargna Ajmerpur, Tehsil Ghumarwin, District Bilaspur and in case during the pendency of the suit appellants- defendants forcibly take possession or raise construction on the suit land, then suit for possession by way of demolition of structure.

3. The respondents- plaintiffs in para-1 of the plaint have pleaded that they are owners in possession of land comprised in khasra No. 146, measuring 1-8 Bighas situated in village Saunkhar, Pargna Ajmerpur, Tehsil Ghumarwin, District Bilaspur, vide jamabandi for the year 1979-80. it has been alleged that appellants- defendants are threatening to interfere in their possession and, therefore, suit was filed.

4. The suit was contested by filing a written statement in which preliminary objections of maintainability, limitation and valuation have been taken. On merits, it has been submitted that disputed house is situated on khasra No. 148, which is owned and possessed by the appellants- defendants. The kitchen was constructed by the appellants- defendants on their own land prior to the filing of the suit. They have denied that any interference is being caused in the possession of the respondents- plaintiffs on land which is owned by them. The respondents- plaintiffs filed replication and reiterated their case set up in the plaint and denied the case set up by the appellants- defendants.

5. The trial court dismissed the suit on 30.9.1988, the respondents- plaintiffs filed appeal against the decision, dated 30.9.1988, of the trial court and learned Additional District Judge after

framing additional issues 2-A and 2-B, vide judgement dated 24.1.1991 remitted the case to the learned trial court with a direction to the trial court to appoint a Local Commissioner and after inviting objections to the report of Local Commissioner record its findings and remit the case to the lower appellate court. The trial court accordingly appointed Tehsildar as Local Commissioner, who submitted his report dated 25.6.1991 Ex. C-1. The appellants- defendants filed objections, dated 16.8.1991 against the report of Local Commissioner. The learned trial court dismissed the objections vide order dated 25.5.1991 and remitted its findings on additional issues 2-A and 2-B by holding that suit of the respondents- plaintiffs for possession of 25 Biswansies of land shown as khasra No. 146/1 as per Tatima Ex. C-2 is liable to succeed. The learned District Judge allowed the appeal on 6.6.1995 and decreed the suit of the respondents- plaintiffs, as noticed above. The appellants- defendants are in appeal in this court.

6. The appeal has been admitted on following substantial questions of law:-

1. Whether the learned courts below were justified in rejecting the appellants' objections on local commissioner's report?

2. Whether the demarcation report of the Local Commissioner, without considering MUSABI and other revenue record, was not illegal?

3. Whether the learned District Judge was justified in remanding the case?

4. Whether the learned courts were justified in ignoring the defendants' evidence which goes to the root of the case.

7. The appellants have filed CMP No. 391 of 1995, under Order 41, Rule 27 CPC for additional evidence, which as per order, dated 14.10.1996, was ordered to be taken up alongwith the appeal.

8. I have heard the learned counsel for the parties and gone through the record. The learned counsel for the appellants has submitted that the lower appellate court has erred in decreeing the suit. The demarcation has not been conducted by Local Commissioner in accordance with law. The demarcation report Ex. C-1 has been wrongly relied by the learned lower appellate court for decreeing the suit. He has submitted that in the facts and circumstances of the case, the appellants may be permitted to lead additional evidence. The learned counsel for the respondents-plaintiffs has supported the impugned judgement and decree and has opposed the application of the appellants for additional evidence.

9. In the application for additional evidence, the appellants have submitted that dispute is only with respect to 25 Biswansies of land and in case Annexure A-1 filed with the application is treated as correct then the land of the appellants increases by one biswa and land of the respondents- plaintiffs would decrease by one biswa approximately and the dispute as such will be over. The appellants by way of application for additional evidence intend to prove copy of field book Annexure A-1 and copy of Misal Hakiyat Annexure A-2. It has been submitted that appellants were not aware of these

documents. The respondents- plaintiffs have opposed this application by filing reply. In para-1 of the plaint, the respondents-plaintiffs have pleaded that they are owners in possession of khasra No. 146, measuring 1-8 bighas. In the written statement in reply to para-1, the appellants- defendants have simply stated that para-1 needs no reply. In other words, the appellants have admitted that respondents are owners in possession of khasra No. 146, measuring 1-8 Bighas. The dispute is whether the construction raised by the appellants is on khasra No. 146 or not. Therefore, the evidence sought to be led by the appellants by way of additional evidence will not assist this court for deciding the suit. The appellants' contention that in case additional evidence is allowed, then it will prove that respondents have one biswa less land is of no assistance to the court. This contention is against the admission of the appellants, which they have made while replying to para No.1 of the plaint where they have not specifically denied the plea of the respondents that they are owners in possession of khasra No. 146, measuring 1-8 Bighas. Therefore, application for additional evidence of appellants being CMP No. 391 of 1995, is dismissed.

10. The appeal has been admitted on above substantial questions of law, but at the time of hearing of the appeal it is found that in fact substantial questions of law No. 3 and 4 framed above are not involved in the appeal. The appellants did not assail the judgement dated 24.1.1991 of learned Additional District Judge calling the findings of learned trial court on additional issues 2-A and 2-B and direction of the learned Additional District Judge to the trial

court to appoint Local Commissioner to demarcate the suit land. The judgement dated 24.1.1991 of learned Additional District Judge has attained finality, which cannot be assailed now. In substantial question of law No. 4 also, specific evidence which has been ignored, has not been stated. Therefore, under sub-section 5 of Section 100 of the Code of Civil Procedure, it is held that substantial questions of law No. 3 and 4 in fact are not involved to be determined by this court in the above appeal and thus the substantial questions of law No. 3 and 4 are accordingly answered.

Substantial questions of law Nos. 1, 2.

11. The substantial question of law Nos. 1, 2 are interconnected, therefore, these are being disposed of collectively.

12. The learned Additional District Judge on 24.1.1991, remitted the case to the learned trial court after framing the following additional issues:-

2-A. Whether the defendants encroached upon the suit land, if so, to what extent and manner and since when and its effect? OPP.

2-B. In case issue No. 2-A is proved, whether the plaintiff is entitled to the alternative relief of possession? OPP.

13. The trial court was further directed to appoint a Local Commissioner and after inviting objections on the report of Local Commissioner, the learned trial court was directed to record its findings and remit the case to the lower appellate court. The trial court accordingly appointed Tehsildar, Ghumarwin as Local

Commissioner and directed him to demarcate the suit land comprised in khasra No. 146, khata khatauni 16 min/ 16 min, measuring 1-8 bighas, situated in village Saunkhar, Pargna Ajmerpur, Tehsil Ghumarwin, District Bilaspur and to find out whether appellants-defendants have encroached upon the suit land, if so what extent and to carry out the demarcation of the suit land on the spot in the presence of the parties. The Local Commissioner submitted his report, dated 25.6.1991 and reported that appellants- defendants have encroached land as shown in khasra No. 146/1 in Sajra.

14. The appellants- defendants filed objections against the report of the Local Commissioner and have submitted that the demarcation has not been conducted after fixing points and the demarcation was conducted without proper identification of old boundary marks. In reply, the respondents- plaintiffs have submitted that the report is legal and the Local Commissioner has also verified the Sajra on the spot. The Local Commissioner was examined by the learned trial court as OW 1.

15. In **State of H.P.** vs. **Laxmi Nand and others** [1992 (2) SLC 307], **Hari Dass and others** vs. **State of H.P.** [1996 (2) SLC 370], this Court has considered in detail how the demarcation is to be conducted. In **State of H.P.** vs. **Laxmi Nand and others** (supra), in para 17 of the judgement, it has been held as follows:

> "It is the admitted case of the parties that in so far as the three revenue estates are concerned, the maps prepared during the last settlement were not on square system. Accordingly, the demarcating officer was required to relay the boundaries of the fields sought to be demarcated from the Shajra (village map), prepared at

the last settlement. He was required to locate three permanent points on three different sides of the area sought to be demarcated. The three points so selected and to be taken as basis must be those, which are admitted to have remained undisputed from the last settlement. The officer is thereafter required to chain threes three points on the spot and then compare the result with the distance given as per scale on the Shajra. It is only when distance, so compared, agree that the Revenue Officer can proceed with the further work of measurement. A pencil line is supposed to be drawn joining these three permanent points and thereafter perpendiculars are supposed to be drawn from these lines to each of the point, which are required to be located on the spot, in order to enable him to find out the exact distance from these points to the point sought to be demarcated, and then tally the result with the help of the scale on the Shajra, which can be drawn only with the help of a crossed staff. The result to be fially checked by measuring on the spot, the distance and then tallying the result with the help of scale on the Shajra. Since this report of demarcation is liable to scrutiny, by way of evidence, it is required that the report of the concerned officer on the face of it must explain the details and the manner as to how he made his measurements, which report must accompany a copy of the relevant portion of the Field Book of current settlement of the village showing Karu kans (dimensions) of the fields of which he took measurements as also a map showing therein the three permanent points, the fields measured and the boundary in dispute. As per the instructions, this is one of the necessary requirements to enable the court to follow the method adopted and also in order to find out the veracity of the proceedings. The other requirement, while submitting the report is to record the statements of

> interested parties before taking the three permanent points to the effect that all of them agreed and accepted the three points as permanent points on three different sides of the property. In case any objection is raised as to the manner in carrying out the demarcation, the said objection is required to be reduced into writing, so as to avoid the possibility of raising any question specifically and also to enable the court to decide such objections. In case, objection is raised on the spot, the demarcating officer is also required to submit his opinion on such objections. In case, while carrying out the demarcation, any discrepancy is noticed in the area of the fields abutting on the boundary in dispute, as recorded in the last settlement and the one arrived at as a result of the actual measurement on the spot, the report is required to incorporate the same with explanation as to the cause of increase or decrease, if any, discovered on the spot. All these requirements, in our opinion, have been incorporated in the instructions with the ultimate object of ascertaining that while carrying out the demarcation correct method was adopted and no mistake committed."

In **Hari Dass** (supra) also this court has considered how demarcation is to be conducted on the spot.

16. Now the perusal of demarcation report Ex. C-1 would show that there is no reference in the report that the demarcation was carried out from Musabi, Momi etc. The report further shows that meeting corner 8 x 5 x 11 karams of khasra Nos. 144 and 152 is a permanent point. The Local Commissioner started demarcation from this permanent point and on the basis of this point he traced other two permanent points on the corners of khasra No. 144. In other words, he fixed three permanent points on the meeting points of khasra No.

144. The perusal of Tatima Ex. C-2 would show that khasra No. 144 is below khasra No. 146. As per **State of H.P.** vs. **Laxmi Nand and others** (supra), the demarcating officer is required to locate three permanent points on different sides of the area sought to be demarcated. In the present case, khasra No. 146 was to be demarcated, therefore, three points were to be fixed on three different sides of the area which was to be demarcated. The Local Commissioner did not fix three permanent points on three different sides of khasra No. 146. There is no reference of Musabi or Momi in report Ex. C-1. The demarcating officer, as per **State of H.P.** vs. **Laxmi Nand and others** (supra), is also required to record the statements of interested parties before taking of three permanent points to the effect that all of them have agreed and accepted the three points as permanent points on three different parts of the property. The lower appellate court as well as trial court have not considered the report of the Local Commissioner, as per law laid down by this Court. The Local Commissioner has not carried out demarcation in accordance with the instructions for carrying out the demarcation, therefore, demarcation report Ex. C-1 is not a legal piece of evidence, and can not be relied for decreeing the suit of the plaintiffs- respondents. There is no other evidence on record to show that appellants- defendants have encroached any portion of khasra No. 146 owned and possessed by the respondents- plaintiffs. The learned lower appellate court has erred in relying the Local Commissioner's report Ex. C-1 for decreeing the suit of the respondents- plaintiffs, therefore, the impugned judgement and

decree are liable to be set-aside. The substantial questions of law No. 1 and 2 are answered in favour of the appellants- defendants and against the respondents- plaintiffs.

17. No other point was urged.

18. The result of the above discussion, the appeal is allowed. The judgement and decree, dated 6.6.1995, passed by the learned District Judge, are set-aside, suit of the plaintiffs- respondents is dismissed with no orders as to costs.

November 6, 2007. **(Kuldip Singh)**
(*Hem*) **Judge.**